

In re) Fair Hearing No. 20,483
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Appeal of)

The petitioner appealed a decision by the Department for Children and Families, Office of Vermont Health Access (OVHA) denying a request for prior authorization from the Medicaid program to pay for an additional four units of physical therapy for her son. The issue is whether the four additional units of physical therapy meet the criteria for prior authorization.

1. The petitioner brought this case on behalf of her son. Petitioner's son was born May 14, 2005 and is now twenty-one months old. Petitioner's son suffered a stroke in utero and has been diagnosed with right hemiparesis.¹ As a result, he has significant weakness on his right side and his motor development has been significantly delayed. In particular, he has serious limitations crawling, standing, and weight bearing on his right arm.

¹ Initially, the child suffered from multiple seizures. Through treatment, he became seizure free at 11 months old.

2. His medical providers have emphasized early intervention through physical and occupational therapy to address his motor development and to give him the means to correct the weakness he has on his right side.

3. OVHA has approved prior authorization requests on behalf of petitioner's son for occupational therapy starting October 31, 2005 and for physical therapy starting November 15, 2005. Requests for physical therapy and occupational therapy are approved for a block of four months. Petitioner needs to reapply for each four month period. In regard to physical therapy, OVHA has approved seventeen units to be used during each four month period they have reviewed. A unit of physical therapy can be as long as needed to meet the patient's goals. These units can be bunched to provide more intensive services for a short period early in the period or can be done weekly depending on the needs of the patient.

4. Petitioner purchased a Creepster Crawler to help her son learn to crawl. The Creepster Crawler is a mobility aid in which the child can be placed in a crawling position. The device is a wheeled arch that supports the weight of the child in a crawling position. The caregiver leans over the top of the arch to help stabilize the child's limbs. A picture is attached.

5. The petitioner asked for prior authorization for twenty-one units of physical therapy on June 9, 2006.

Petitioner asked for the four additional units of physical therapy so that she and her son's personal care attendants could be trained to use the device properly.

6. On June 13, 2005, OVHA approved 17 units of physical therapy for the period of July 16, 2006 to November 15, 2006 noting that the units could be used more intensively at the beginning of the certification period to provide intensive training on the device. OVHA did not approve the additional four units of physical therapy finding that the Creepster Crawler was a simple device and the additional units were not medically necessary. Petitioner appealed this decision.

7. The parties disagree whether the Creepster Crawler is a simple device. The petitioner described the difficulties they had when her son started using the device; her son initially was in a frog position so that he was not in a proper position to crawl.

8. A fair hearing commenced on September 28, 2006. Petitioner provided additional medical evidence in support of her claim including:

- a) A letter dated September 22, 2006 from Dr. Scott Benjamin from the Rehabilitation Center at Fletcher Allen Health Care noting the child's mobility limitations due to his inability to crawl. Dr. Benjamin opined that the Creepster Crawler was a relatively complicated device and that he supported the additional four therapy sessions to train the child's therapists and care-givers.
- b) A letter dated September 25, 2006 from Odette Taylor, PT from the Visiting Nurse Association noting that the additional visits would provide time to train family and care-givers as well as time for the child to increase his tolerance of the device so he could use it. In addition, Ms. Taylor noted that using units more frequently at the beginning of the certification period would leave the child without physical therapy at least once a week to work on his other motor skills.
- c) A letter dated September 27, 2006 from Dr. Louisa Kalsner from Vermont Children's Hospital in support of the additional physical therapy units.
- d) A letter dated September 7, 2006 from Dr. Rebecca Collman supporting the request for additional physical therapy units.

The fair hearing was continued to allow OVHA time to review their decision based on the additional medical information provided by petitioner.

8. Susan Mason, PT, clinical consultant to OVHA reviewed the additional information and contacted both Dr. Benjamin and Ms. Taylor. Ms. Mason did not change her decision that there was no medical necessity justifying the additional four units noting that the Creepster Crawler is not complex and that Ms. Taylor reported that numerous care-

givers had learned to use the device. Ms. Mason noted information from Ms. Taylor that the Family, Infant and Toddler (FIT) program decided to pay for four additional units in addition to the services they paid for at the Rehab Gym.

9. During a telephone status conference held on October 24, 2006, the hearing officer asked petitioner whether these sessions had been paid by FIT because the case would then be moot. Petitioner did not know. Petitioner had additional information regarding her son's condition including his earlier medical history. Petitioner was directed to provide information from FIT whether they had paid for the services and OVHA was directed to review the additional information.

10. In a letter dated October 27, 2006, Jane Kilburn from FIT noted they had not paid for the four units as they were waiting for the outcome of the fair hearing, but they could pay for these services.

11. Susan Mason added an addendum to her Medical Basis Statement dated November 11, 2006 after reviewing the additional documentation provided by petitioner. Ms. Mason's analysis remained the same. Ms. Mason's analysis was provided to the Human Services Board on November 28, 2006 and

all supporting documentation in OVHA's file was supplied on December 18, 2006.

ORDER

The decision by OVHA is affirmed.

REASONS

Petitioner is a strong advocate for her son's needs including rehabilitation services to strengthen his right side weakness. As a result of her advocacy, her son not only receives physical and occupational therapy through Medicaid but personal care services and additional rehabilitation services through FIT. Petitioner's dispute arose from OVHA's decision to refuse prior authorization for an additional four units of physical therapy during one certification period.

In considering petitioner's case, it is important to understand the regulations guiding prior authorization.

The regulations for prior authorization are set out in Medicaid Manual M106. M106.1 states:

Prior authorization is a process used by the department to assure the appropriate use of health care services. The goal of prior authorization is to assure that the proposed health service is medically needed; that all appropriate, less-expensive alternatives have been given consideration. . .

The criteria for approving prior authorization of a health service are set out in M106.3 which states:

A request for prior authorization will be approved if the health service:

1. is medically necessary (see M107);
2. is appropriate and effective to the medical needs of the beneficiary;
3. is timely, considering the nature and present state of the beneficiary's medical condition;
4. is the least expensive, appropriate health service available;
5. is FDA approved, if it is FDA regulated;
6. is subject to a manufacturer's rebate agreement, if a drug;
7. is not a preliminary procedure or treatment leading to a service that is not covered;
8. is not the repair of an item uncovered by Medicaid;
9. is not experimental or investigational;
10. is furnished by a provider with appropriate credentials.

Medical necessity is defined at M107 to be:

. . .

health care services...that are appropriate, in terms of type, amount, frequency, level, setting, and duration to the beneficiary's diagnosis or condition.

. . .

Additionally, for EPSDT-eligible beneficiaries², medically necessary includes a determination that a service is needed to achieve proper growth and development or prevent the onset or worsening of a health condition.

In making their decision, OVHA determined that the extra units of physical therapy were not medically necessary based upon (1) the high level of services the child was receiving, (2) the device being a relatively simple one to learn to use so that training could be incorporated into the approved number of physical therapy units, (3) the number of caregivers who learned to use the device, and (4) the lack of medical evidence to demonstrate the medical necessity for the additional visits. In addition, Medicaid is the funding of last resort for medically necessary services, and there appears to be a funding source through FIT. From looking at the evidence, it appears that the child's initial difficulties stemmed from his tolerance to using the device not from the caregivers not knowing how to use the device.

Medicaid is the payer of last resort. Here, there has not been sufficient documentation by the health care providers regarding what the actual difficulties training others to use the Creepster Crawler are nor why the training could not be accomplished within the authorized units of

² EPSDT provides payment for medical services for children.

physical therapy. In fact, OVHA's information from the child's physical therapist was that training had been accomplished. Moreover, another funding source does exist for these units through FIT.

Accordingly, OVHA's decision should be affirmed. 3
V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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